



REPUBLIC OF ALBANIA
COMMISSIONER FOR PROTECTION OF PERSONAL DATA
OFFICE OF COMMISSIONER

INSTRUCTION

No 9, Dated 15/09/2010

ON

**FUNDAMENTAL RULES IN CONNECTION WITH THE PROTECTION OF
PERSONAL DATA IN WRITTEN, VISUAL AND AUDIOVISUAL MEDIA**

In reliance on the Law No 9887, dated 10.03.2008 "*On Protection of Personal Data*", on decisions of the Parliament of Albania No 211, dated 11.09.2008 "*On election of the Commissioner for Protection of Personal Data*", and assuming the responsibilities asked by the requirements of Articles 29, 30 and 31, of the law No 9887, dated 10.03.2008 "*On Protection of Personal Data*", I

INSTRUCT:

All the public and private controllers of written and visual media shall, in processing the personal data of citizens (which is any act which is carried out in full or in part with automatic means, with the personal data, such as collection, registration, storing, ordering, adjustment, rectification, advice, exploitation, use, blocking, deletion or destruction or any other act, such as the transmission of the data), be obliged to take account of:

While processing the personal data for journalistic purposes, the implementation of requirements of Article 11 of the law "*On Protection of Personal Data*": "*processing of the personal data only for journalistic, literature or artistic purposes shall be excluded from the application of Articles 5, 6, 7, 8, 12, 18, 21 and 28 of this law, only if the protection of the personal data, in accordance with these provisions, hinders the exercise of the right of freedom of expression*".

Freedom of press is considered to be essential in a free and democratic society. The freedom of information is based on the freedom of manifestation of opinion, on freedom of communication, but this does not mean to be considered and dealt with as a prevailing interest of the journalist. The right of communication, the right to know (to get to know). Transparency cannot erase (delete) the need for intimacy and, above all, the right to act freely the private sphere for everyone, for freely developing the personality and respecting the dignity. The European Charta of human rights opens with the following solemn evaluation:

“Human dignity is inviolable, it shall be respected and protected”.

In this sense, everyone processing personal data only for journalistic, literature or artistic purposes shall initially consider the right of the individual, the person of these personal data, to protect them. The preservation of confidentiality (secrecy, intimacy, familiarity, trust) as a fundamental right of individual for the protection of his data, shall not come up as a hindrance of the second hand, to the right of freedom of expression of journalist or any other entity provided for in this Article. It is true that freedom of expression shall not be subject to preliminary censure, but the censure does not have to do with non-possession of the right of the individual to protect his personal data. It should be taken into account that the right to private life has to be adjusted to the rules regulating the freedom of expression. At the same time, the exercise of the right of freedom of expression is not unlimited, because it is required to be done within the limits of requirements provided for in Articles 15, 17, 36, 41 of the Constitution of the Republic of Albania, since the fundamental human rights are inviolable and are at the foundation of the entire legal order and they can only be restricted by law.

General

1. All the editors and publishers of editorial materials of written, visual and audio-visual medium shall, in both versions: written and online publications, abide by all the points of this instruction in accordance with the law No 9887, dated 10.03.2008 “*On Protection of Personal Data*”.
2. The written, visual and audio-visual media shall make arrangements not to publish information being not clear, misleading or distorted, including even photos. The moment that a considerable inaccuracy, a misleading or distorting statement is encountered, it shall be rectified immediately and paying appropriate importance. In written media, a clear distinctions shall be drawn between the comment, presumption and the fact.
3. While collecting personal data indicating the racial and ethical convictions, religious, philosophical conviction or others, political views, party affiliation, membership in philosophical or political associations, as well as the data which may indicate the health status and sexual orientation, the general list shall guarantee the right to inform about the news of public interest, observing the essence of information, avoiding references to relatives or others not bearing connection to the facts.

4. The journalist shall respect the right of the person for non-discrimination based on race, religion, political conviction, sex, personal, physical or mental relations.
5. In addition to the essence of information, the journalist does not provide news or public photos or photos of persons involved in events impairing the dignity of the person, does not refer to details of violence, unless he considers it as news or an image in public interest. Unless they consist an important public interest or for established justice and police purposes, the journalist does not obtain or produce images and photos of people being under arrest without their consent. The persons should not be filmed while they are in handcuffs.
6. The written, visual and audio-visual media shall take account of the following principles of privacy:
 - a) every person shall be entitled to have his or her private or family life, house, health as well as the correspondence, including the digital communication, respected.
 - b) The journalists may not intervene with the private life of any individual, without their consent.
 - c) It is unacceptable to publish photos of individuals in private places without their consent.

Note -- "private places" are public or private property, where a reasonable belief of intimacy exists.

7. A journalist may not enter a house forcefully, or get images from an environment which is private, and he may not get images from the hospital or prison with camera without their consent. The protection of the house and other private places shall extend over other places of offering care or detention or rehabilitation places.
8. The personal data are collected by many state and private institutions, for instance the pharmacies collect, through the informants, personal data of patients and recipes issued by the doctors, banks for their clients, insurance companies, phone companies, police etc.

The journalists shall, in this cases, evaluate themselves, taking account of the rules on protection of personal data, as to which information may violate the dignity and personality of the persons of the data in order not to publish them. The essence of information must not be exceeded, unless it is required by public interest. There is a possibility of balancing the interests and it shall always be the journalist publishing the data.

Protection of minors

9. Children are among the most sensitive and vulnerable persons to the risk of violation of their fundamental rights (specifically the right to privacy).
 - a) Young persons shall be free to complete their schooling activity, without unnecessary interventions;
 - b) the children under the age of 16 years old shall not be interviewed or photographed for issues including their well-being (progress) or of another child, unless the responsible parent provides his consent.

- c) The pupils shall not be photographed or interviewed at school without the permanent of the school authorities;
- d) The journalists shall not use the fame or position of a parent or custodian as a justification to publish details of the private life of the child.

10. To the effect of protecting the personality, the journalist shall not publish the names of minors included in the news reports or provide details that might lead to their identification.

The protection of the personality of a child shall, taking account of the quality of the news and its components, extend over the facts which do not consist specifically crimes.

Publication and dissemination of details, by any means, of news or photos to identify a child involved in a crime shall be forbidden.

11. The press shall not identify the children under 16 years of age being victims or witnesses in sexual crime cases.

In every press reports over a case including a sexual crime against a child:

- a. the child shall not be identified;
- b. attention shall be demonstrated concerning facts not to imply the relationship between the defendant and child.

The right of a minor to privacy, specifically in the event of an abuse case, is, in the opinion of the Commissioner, always a priority as compared to the right of the chronicle, and this is valid also for the case where the identity is made known through official sources or sources from the family.

The press shall not identify the victims of sexual assaults or publish material which might contribute to such an identification, unless there is reasonable grounding.

12. The news that child has been adopted may not be published without the approval of the adopting parents. At the same time, journalists may not publish data violating the privacy of the adopted and adopting persons.

13. The anonymity of the minor shall be safeguarded in any legal procedure, above all several procedures where minors are involved in a divorce case or in other dedicated cases for the psychology of the minors.

14. A conflict exists between the rights of children and their parents. The journalists should consider with priority the interests of the children and should take account of the nature of relations between the parents and the child, and whether the parent is in a position to represent positively the interests of the child. Not always the information obtained from parents of a child may be reported by the journalist, since he is always responsible to evaluate whether the publication is in the best interest of the child, implying the protection of the personality and harmonic development.

15. The dissemination of identifying data of the minor and the exposure of the data exposing the sexual life (information being subject to special protection due to the sensitive nature) are essential and prevail over the freedom of the right of press, this

being a right which may be exercised with the same effectiveness even without reporting the name and surname, or of the identifying data.

16. The name of the minor with serious pathology shall not be used for propaganda purposes or any other reason which is at variance with their rights and do not consider the dignity.
17. Minors in serious crisis conditions shall not be interviewed (for instance, when they have deserted the house, had been used by organized crime, had been used for prostitution, etc.) and as long as the interview is necessary for the public interest, the anonymity shall be safeguarded.
18. Participation of minors in media programs when the emotional load of the child is being discussed shall not be allowed.

Protection in criminal proceedings

19. In the course of reporting the crime, the relatives or friends of the convicted persons or being accused for a crime shall not be identified generally without their consent. At the same time the journalist is responsible for the published information to be comprehensive, accurate and updated. Thus, in every case the fundamental guarantees of the defendant shall be observed, as opposed to suspicion of guilt, until the final conviction (presumption of innocence). The charges may come from a third-party, police sources or a police procedure, for instance arrest. There may be cases where it is difficult to establish the allegations made by a third-party, but they must be reported for the public interest. If the editors wish to publish materials under these circumstances, they should take account of doing this **without identifying the defendant**, as a way to meet the requirements of this instruction. The editors should bear in mind that they instruction ensures to everyone -- including those being charged or convicted in connection with the crime -- the right to have their privacy respected, as well as his house, health and correspondence.
20. Respecting the principle of presumption of innocence is a constituent part of the law in order to have a fair process without legal infringements. Consequence of this principle is that the opinions and information with regard to criminal proceedings being conducted, shall be communicated by the press only if they do not impair the presumption of innocence of a person being a suspect or charged for certain crime.
21. For making information available in connection with suspects, charged or convicted persons or other persons having a connection to this process, the right to privacy of these persons shall be observed, in accordance with Article 8 of the European Convention of Human Rights. Specifically this protection shall be guaranteed to persons in young age, who are weaker, being victims, witnesses as well as family members of suspects, charged or convicted persons. In every case account shall be taken of detrimental consequences is that might come for these persons, as a result of this disclosure of information which might bring about the discovery of their identity.
22. The identity of witnesses shall not be disclosed, unless these persons have provided their preliminary consent, the identification of the witnesses is in the interest of the public, or the testimony has been made public in advance. Specifically, the identity of the witness shall not be disclosed, where such consequences might come about such

- as a risk for his life or safety. The measures provided for in the programs for the protection of the witnesses shall be observed, specifically in criminal proceedings bearing a connection with organized crime or criminal offences of family character.
23. The journalists shall be allowed to have contact with persons serving imprisonment sentences, to the extent that this does not impair the correctness of the functioning of justice, the rights of inmates and personnel of the prison or security of the penitentiary Institute.
 24. Disclosure of names of persons investigated or being tried shall be prohibited, to the effect of protecting the privacy and the right for the protection of data in connection with third persons involved in investigations.
 25. The disclosure of names of convicted persons compared to the cases involving a suspect or defendant may be done freely, since that decision has been made by the court. However, the journalist must evaluate on case basis the publication of the identifying data of a convict, since account shall be taken of, *inter alia*, specific qualities of involved persons, for instance, disabled or mentally disturbed persons, type of verified crime etc.
 26. With regard to names of family persons and persons known by persons interested in justice affairs, the journalist may, with the exception where specific obstacles exist, disclose data with regard to persons being directly involved in these events, not making public the names and other information pertaining to persons seemingly not involved in investigation but have a connection with the protagonists of the event, for instance, only due to the fact that they have sentimental relations or cohabit with them, or due to fact-related circumstances (for instance, the identity of the owner of the house where a crime has been committed shall not be disclosed).

Interception

27. Media shall not process personal data or publish material obtained using hidden camera or of the hidden equipment to listen to private calls or a mobile phone, messages or e-mail, or through the unauthorized use of documents and photos containing personal information.

It is not a legitimate right to reproduce the news, against the will of interested, all the photos taken forcefully by the police for documentation purposes and the investigation, which is not distributed under specific conditions for public interest. References to relatives or other persons not involved with the facts of the event shall be avoided.

Full respect of dignity shall always be kept under the attention.

Even with the presence of the facts of public interest, the publication of processed data stemming from telephone interception shall observe the parameters of the essence of information. No parts from entirely personal aspects or bearing a connection to sexual orientation may be published.

The journalists should bear in mind not to publish texts of messages, phone conversations pertaining to private life of interested persons, their personal relationship or professional interest.

Protection of health data

28. The journalists should identify themselves and get permission from the respective executive authority before entering the known public zones of hospitals or similar institutions to obtain information.

The restrictions to intervene with a private life are specifically important for articles in connection with persons being in hospitals or similar institutions. The health data are sensitive data and shall not be published without the consent of the concrete person, or the person shall not be identified and no details are provided leading to his identity.

The journalist shall, referring to the health of a certain person, identified or identifiable, respect his dignity and his privacy, specifically in the cases of serious diseases, as well as avoid the publication of unnecessary details.

The publication of the data from tests made on biological samples taken dishonestly which might disclose delicate data for the health shall be prohibited.

The reporting shall be allowed on the remaining within the essence of information and always respecting the dignity of the person.

Sexual data

29. The journalists shall stay away from the description of sexual customs pertaining to the orientation of the identified or identifiable person. Publication is allowed in the context of remaining within the essence of information and respecting the dignity of the person, and if it has a position of special social and public importance.

Financial data

30. The journalists shall not publish those data indicating the properties of the shareholders of the company, financial profit etc., or personal data with regard to the economic activity in absence of a public interest, since they may have an impact on the economic interests of the economic and financial activity of the persons involved in the event.

Data of employees

31. The use of geometric technologies at workstations allows the identification of the person, with different levels of security according to a system: fingerprints, geometry of hands or face, scanner of eye pupil or other methods. The general and uncontrolled use of the biometric data is forbidden for journalists and other unauthorized persons. The publication of personal data of employee's insured in any way by the journalists shall be prohibited, as long as they affect the dignity of the employee.

Publication of photos

32. In the course of documentation facts of the chronicle by photos occurring in public places, the journalist and/or photographer shall evaluate what type of focusing should be selected, avoiding focusing sites only for individuals or details of persons, as well as the dissemination of these data does not turn out to have any connection or exceeds the aim of the article (chronicle).

The photos which have been exposed in the course of a press conference held by the police forces or taken in a legal way, cannot be distributed, but only following the specific aims for which they have been collected initially (verification, prevention or avoiding crimes).

The photos documenting the acts of arrest can not be distributed if they impair the dignity of interested person.

The reproduction of images of detained persons shall be prohibited, unless this is in the interest of "public interest" (close to consent and interests of the person, and to the effect of justice and investigation).

The other facts as those pertaining to the arrest, investigation and process (for instance, photos taken from identity documents, family albums or taken in court hearing) should be used in legitimate and correct way and they shall be distributed according to the appropriate evaluation disclosing the essence of information with regard to the news.

Making a combination or correction for photo by electronic method, or compiling a subtitle shall not be used in such a way as to mislead or deceive the reader, but all it shall always be done in a similar form with the photo, even if it is changed through the combination or correction.

The photo shall not be exposed or offered for sale, as long as the exposure or trading shall have a negative impact on the honour, reputation but also the dignity of the photographed person.

The highest possible consideration shall always be shown for the victims of the crime and accidents demonstrating full control of names and photos for public, keeping the attention away from both the victims and their relatives.

Public persons

33. The private life of renowned persons or officiating in public offices shall be observed. As long as the news or data have no connection to their public life, under no circumstances should there be published unnecessary data, including the family members, friends, contacts or minors.

The journalists may write about the general health status of the public person, without going into details of this sickness, specifically in the events of serious diseases, demonstrating a reservation in the publication of details which are strictly clinical details and do not serve the aim of the chronicle.

Consent

34. Generally, sensitive data, that is the personal data, "which may display racial opinions or ethnic, religious, philosophical opinions or other political convictions, membership in parties, trade unions, associations or religious organizations, in the philosophical or legal life, as well as the data of health situation and sexual orientation" may be processed by journalists only upon obtaining the consent of the interested person. The consent is not necessary, as long as they are abiding by the restrictions of the freedom of press, specifically the essentially formations with regard to events with **public interest**.

Concept of public interest

35. The circumstances determining the public interest include
- a) interest of national security;
 - b) territorial integrity or public safety;
 - c) prevention of riots or crimes;
 - d) public prevention of fraud due to an act or declaration of an individual;
 - e) protection of health or moral;
 - f) protection of reputation and the rights of others;
 - g) prevention of disclosure of confidential information, or to guarantee the impartiality of judicial power, etc.

The public interest in the freedom of expression in itself shall not supersede the protection of the interest of individual

Cooperation

36. Being in the capacity of controller, the journalists shall be subject to legal obligation to cooperate with the commissioner for the protection of personal data, thus ensuring the entire information he needs performing the tasks entrusted by the law "On Protection of Personal Data".

Subject to implementation

37. All the decisions and instructions approved by the office of the Commissioner in the field of media shall be obligatory for implementation even for journalists of written, visual and audio-visual media.

Sanctions

38. Based on the Article 39 of the law “*On Protection of Personal Data*”, the public and private controllers of written, visual and audio-visual media in the Republic of Albania not abiding by the rules for the processing of the personal data, shall oblige the Commissioner to impose fines ranging from 10,000 up to 50,000 ALL.

The Commissioner is open to cooperate with the journalists in the sense and implementation of the law “*On Protection of Personal Data*”.

This decision shall enter into effect immediately and shall be published in our official website, www.kmdp.al.

COMMISSIONER

FLORA ÇABEJ (POGAÇE)